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June 16, 2014

VIA ECF

Hon. Jesse M. Furman
United States District Judge
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

Dear Judge Furman:

Re: Perez v. Amerindo Investment Advisors, Inc. Employee Savings Plan
Civil Action File: 1:14-cv-01557-JMF

I am writing on behalf of the Plaintiff, Thomas Perez, Secretary of Labor ("Secretary") regarding Perez v. Amerindo Investment Advisors, Inc. Employee Savings Plan (the "Plan"). This renewed adjournment request is in response to Your Honors' ECF Order dated March 21, 2014 scheduling a pre-trial conference for June 18, 2014 at 3:15pm. An initial adjournment was request was denied by Your Honor on May 12, 2014 without prejudice to renewal if or when Plaintiff elects to seek entry of a default judgment. I apologize for missing Thursday's deadline regarding scheduling of the pre-trial conference. I had an outdated email on file with the Court and did not receive the notification until I was contacted by Your Honor's clerk today.

The Secretary requests an adjournment of the scheduling conference as a certificate of default has already been obtained from the Court and Order to Show Cause for Default will be filed with Your Honor in the next few days. The procedural history of this case to date is as follows: This case was filed on March 6, 2014, when the Secretary filed the Summons and Complaint in this case. (See Exhibit A). Process was served on the New York Secretary of State on April 4, 2014 by a U.S. Department of Labor investigator and documents were then mailed to the address identified on the New York State Division of Corporations website, 399 Part Avenue, 22nd Fl, New York, New York 10022. (See Exhibit B). The defendant has not Answered the Complaint and the Secretary is in the process of seeking a default judgment against the Plan. Upon application by the Plaintiff, the Clerk of this Court has certified that Defendant has failed to plead or otherwise defend this action, and issued a Clerk's Certificate of Default dated June 3, 2014. (See Exhibit C).

The defendant in this matter is an abandoned employee savings plan that Congress expressly provided could be sued in its own capacity under § 502(d)(1), 29 U.S.C. § 1132(d)(1). Such plans are typically referred by Department of Labor personnel as "orphan plans." The Plan sponsor, Amerindo Investment Advisors, Inc. is no longer in business. According to the New York State Department of States' website the Corporation is inactive and was dissolved by Proclamation / Annulment of Authority on April 25, 2012. (See Exhibit D.

Alberto Vilar was the sole trustee of the above identified Plan and co-founder of the Company, Amerindo Investment Advisors, Inc. Mr. Vilar is currently serving a 10 year jail sentence for a 2008 conviction. Due to his criminal conviction, Mr. Vilar is prohibited from serving as an administrator, officer or fiduciary of any employee benefit plan pursuant to ERISA § 411, 29 U.S.C. § 1111. As such, there is no one in authority who can direct the disbursement of the plan's funds, cooperate with this Court and the Secretary, and bring the plan into compliance with applicable federal laws such as the Internal Revenue Code. The Secretary's Order to Show Cause for a Default will follow the procedures outlined in Attachment A of Your Honors Individual Rules and will clearly explain the relief sought by the Secretary including the appointment of an independent fiduciary to terminate the plan and distribute plan assets.

Attached as Exhibit E, please find the Civil Case Management Plan and Scheduling Order submitted by the Secretary as the defendant is unresponsive. Given the likelihood of a default judgment being entered shortly, the Secretary respectfully requests an adjournment of the initial conference currently scheduled for June 18, 2014 before Your Honor. If an adjournment is not possible the Secretary requests a telephone conference in lieu of a personal appearance as I tele-work and my duty station is out of state. I can be reached on my cell phone at (917) 573-2567.

Thank you for your attention to this matter.

Sincerely,

Jeffrey S. Rogoff
Acting Regional Solicitor

By:



Stacy M. Goldberg
Attorney

cc: Amerindo Investment Advisors, Inc. Employee Savings Plan
399 Park Avenue, Floor 22
New York, NY 10022 (*via first class mail*)